

Supreme Court, U. S.

**FILED**

AUG 17 1977

MICHAEL RODAK, JR., CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1976

—◆—  
No. 76-1824

—◆—  
**FLEMING S. JACKSON,**  
Plaintiff-Appellant,

vs

**STONE & SIMON ADVERTISING, INC., et al**  
Defendants-Appellees.

—◆—  
**MOTION TO DISMISS**

—◆—  
**CULLEN, SETTLE, SLOMAN & CANTOR**  
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Phone (313) 964-0400  
Attorneys for Defendants-Appellees

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**Supreme Court of the United States**

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Plaintiff-Appellant,

v8

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Defendants-Appellees.

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**MOTION TO DISMISS**

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Defendants-Appellees respectfully Move this Court for an Order dismissing the above referenced Appeal. This is a *direct* appeal from an Order of the Sixth Circuit Court of Appeals. The appeal is allegedly taken pursuant to 28 USC 1252 and 2101. Direct appeals are permitted under these sections only upon a holding that an act of Congress is unconstitutional. No such holding was made by the Sixth Circuit Court of Appeals and therefore this Court lacks jurisdiction in the appeal. A Brief in support of this motion follows.

**BRIEF**

The actions originally filed by Plaintiff in the United States District Court for the Eastern District of Michigan alleged that Defendants infringed Plaintiff's copyright. The District Court dismissed the Complaints, finding that the alleged copyright infringements were licensed by the Plaintiff. The Sixth Circuit Court of Appeals affirmed the judgments of the District Court and denied a Motion for Reconsideration.

The Plaintiff-Appellant then filed a "Motion To Reverse And/Or Set Aside And/Or Vacate Void Judgments" in the United States Court of Appeals for the Sixth Circuit. This Motion was denied by the Court of Appeals March 3, 1977 as "frivolous and entirely without merit". Plaintiff-Appellant then filed a Motion for Rehearing which was denied by the Sixth Circuit Court of Appeals March 28, 1977. The Plaintiff-Appellant then filed the present direct appeal to this Court.

Direct appeals to the Supreme Court have been abolished except in specific instances which are covered by 28 USC 1252 and 1253. The present appeal is allegedly premised upon 28 USC 1252 and 28 USC 2101. The statutory appeal however requires a holding that an act of Congress is unconstitutional. The Defendants-Appellees have been unable to determine the grounds for appeal until receipt of Plaintiff-Appellant's designation of the Questions Presented by the Appeal. It is obvious from a review of these Questions that the Appeal is not based upon a holding that an act of Congress is unconstitutional.

Therefore, the present Appeal to this Court must be dismissed and the Defendants-Appellees respectfully request an Order dismissing the Complaint.

Respectfully submitted,

/s/ Raymond E. Scott - P20165  
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*Attorney for Defendants-Appellees*

*Certificate of Mailing*

This is to certify that a copy of the foregoing MOTION TO DISMISS and BRIEF were mailed, postage prepaid, to Plaintiff-Appellant Fleming S. Jackson, at 5061 Dailey, Detroit, Michigan 48204, this 29th day of July, 1977.

/s/ Raymond E. Scott